

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRYL LEE WRIGHT,

Defendant.

NO. CR14-5539BHS

MOTION FOR COMPETENCY AND
SANITY EXAMINATION

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and David Reese Jennings, Assistant United States Attorney for said District, and files this motion to determine the competency and sanity of defendant DARRYL LEE WRIGHT, pursuant to Title 18, United States Code, Sections 4241(a) and 4242(a). The United States further moves this Court, pursuant to Title 18, Sections 4241(b), (c) and 4247, to order defendant undergo a psychiatric and/or psychological examination before he is sentenced. The United States, in support of its motion, states as follows:

1. DARRYL LEE WRIGHT pleaded guilty to two counts of a broad scheme to defraud multiple government agencies. Sentencing was scheduled for August 25, 2016. In support of his arguments at sentencing, defendant submitted to a psychological

1 evaluation and submitted the psychologist's report to mitigate whatever sentence this
2 Court might issue. *See* Report of Sheppard Salusky, Exhibit 5 of Defendant DARRYL
3 WRIGHT's Sentencing Memorandum. Unlike similar reports commonly offered at
4 sentencing, Dr. Salusky's report takes the psychologist's opinions and conclusions to
5 where they conflict with the medical/legal standards for competency to stand trial,
6 competency to assist counsel, and even for sanity. Dr. Salusky states, in effect, that
7 defendant DARRYL WRIGHT's condition excuses him from responsibility for his lies,
8 and from understanding the consequences of lying. The statements that cause the most
9 concern may be found in the last paragraph of page 10 of defendant's Exhibit 5.

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11 2. The test for competency is whether the defendant "has sufficient present
12 ability to consult with his lawyer with a reasonable degree of rational understanding—
13 and whether he has a rational, as well as factual, understanding of the proceedings against
14 him." *Dusky v. United States*, 362 U.S. 402, 402 (1960). Despite what may appear to be
15 reasonable precautions by the Court, counsel, and the prosecution, it can be plain error to
16 fail to order a competency hearing before sentencing. *United States v. Dreyer*, 705 F.3d
17 951 (9th Cir. 2013).

18 3. To establish that a defendant is not guilty by reason of insanity, the defense
19 must show both that the accused suffered from a serious mental disease or defect at the
20 time of the crime, and that his mental disease or defect prevented him from appreciating
21 the nature and quality or wrongfulness of his acts. 18 U.S.C. § 17. This showing must be
22 made by clear and convincing evidence. 18 U.S.C. § 17(b).

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24 4. It is difficult to now unsay or disregard the statements by Dr. Salusky, even
25 though they are later mitigated by Salusky's comments in his report. The United States is
26 concerned that the defense has launched a casual insanity defense, without the structure
27 and burdens that typically control such an argument. It is also a concern that a reviewing
28 court might wonder why additional steps were not taken to clarify and qualify Dr.

1 Salusky's comments. Accordingly, the United States urges this Court to use its authority
2 to order an independent psychological examination be conducted, directed at both the
3 question of DARRYL WRIGHT's competency, and whether it was possible that he was
4 unable to appreciate the nature and quality of his lies and other fraudulent acts.
5 Specifically, the United States requests that the defendant simultaneously undergo a
6 formal psychiatric/psychological examination by a qualified psychiatrist or psychologist
7 of the United States Bureau of Prisons, consistent with the procedures set forth in 18
8 U.S.C. § 4247. Pursuant to § 4247(b), the Court "may commit the [defendant] to be
9 examined for a reasonable period, but not to exceed thirty days," for purposes of an
10 examination under § 4241. Once the examination is complete, a psychiatric or
11 psychological report "shall be prepared by the examiner," and "shall be filed with the
12 Court with copies provided to [the parties]." *See* 18 U.S.C. § 4247 (c) (setting forth the
13 reporting requirements for a psychiatric/psychological evaluation under § 4241).

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15 5. Undersigned has conferred with defense counsel Chris Black, who objects
16 to this motion.

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CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s/Jennifer Shauburger
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